02-05 MPT Example 1

Memorandom

To: Thomas Burke
From: Applicant
Re: In Re Rose Kingsley

I. Greene Was Not a Partner or Associate of Kingsley for Purposes of Rule 200.

A. Greene and Kingsley Were Not Partners

Applying the standards set forth by the Franklin Court of Appeals in Chambers v. Kay, it is highly unlikely a court would find Greene to be a partner or associate of Kingsley for purposes of Rule 200. It is clear that they were not partners for the reasons set forth in Chambers. There is no evidence suggesting Kingsley and Greene acted as co-owners of a law firm or that they contemplated sharing in the profits or losses of a continuing business. In fact, the evidence is to the contrary. At the time Greene was working on the case with Kingsley, she was trying to build her own practice and work out of her own home. Therefore, the two were not partners for purposes of Rule 200.

B. Although a closer argument, Greene and Kingsley were not in an associate partner relationship under the standards set forth in Chambers, supra. For purposes of Rule 200, an associate is a lawyer who works for, rather than with another lawyer. (Chambers, supra) (Emphasis in original). In determining this in the case of a temporarily engaged lawyer, the Court looks to the totality of the circumstances, paying particular attention to supervision and compensation. (Chambers, supra).

With regard to supervision, although Kingsley did supervise Greene as far as relationship with the client, the agreement was that Greene would conduct investigation and discovery, and Kingsley was relying heavily on Greene's technical expertise in that regard. Therefore, Kingsley was unable to supervise the substance of Greene's work. This inability to supervise substance would likely outweigh any supervision regarding the client relationship and office environment. Because Kingsley was unable to supervise Greene substantively, the supervision factor weighs in favor of finding no associate relationship.

With regard to compensation, a contingency fee method of compensation shows no associate relationship, while an hourly or salary compensation would so indicate. Here, the fee agreement provides that Greene would receive 30% of any contingency fee paid to Kingsley. While the agreement also provides, and Kingsley did pay, compensation to Greene at $50 per hour, the agreement provides the hourly compensation be deemed an advance of the contingency fee. Therefore, Kingsley and Greene's relationship would not be considered that of partner or associates under the principles set forth in Chambers. Therefore, the only way Greene will be able to recover from Kingsley is if their fee splitting agreement is found to be proper under Rule 200.

II. The Fee-Splitting Agreement Fails to Meet the Requirements of Rule 200.

Rule 200 of the Franklin Rules of Professional Conduct provides specific requirements for fee-splitting agreements. The major requirement is that the client has consented in writing to the fee-splitting agreement after full disclosure in writing of the division of fees and its terms. As explained in the Official Comment to Rule 200, as well as by the MO Court of Appeals in Margolin v. Shemaria, the disclosure and consent requirements are to be strictly construed. The consent in writing requirement is to be strictly enforced as a bright line rule.

As explained by the Court in Margolin, supra, the purpose of Rule 200 is client protection to the maximum extent possible. As in Margolin, strict enforcement of Rule 200 sometimes sacrifices recovery of a lawyer for breach of a fee-splitting agreement because noncompliance with Rule 200 renders the agreement unenforceable. As explained by the Franklin Court of Appeals in Margolin, lawyer protection must yield to client protection because the lawyer is in a better position to know of Rule 200's requirements and to make sure the fee splitting agreement complies.

Applying Rule 200 to the facts at bar, it is clear that Greene and Kingsley did not obtain Moreno's written consent after full disclosure.

First, the terms of the disclosure were inadequate. Rule 200 requires disclosure of the terms of the fee-splitting agreement in writing. Kingsley's October 23, 2002 letter to Moreno did not disclose what the percentage of the split was. Although Greene orally disclosed the 30% split to Moreno, the disclosure was not made in writing.

Second, Kingsley and Greene did not obtain Moreno's consent in writing. The acknowledgment signed by Moreno on October 30, 2002 was an acknowledgment of receipt and understanding, it was not written consent. Furthermore, the fact that Greene later obtained Moreno's oral consent is of no consequence. As clearly explained by the Franklin Court of Appeals in Margolin, oral consent is not sufficient.

Because Kingsley and Greene did not disclose all terms of their fee-splitting arrangement to Moreno, and did not obtain Moreno's consent in writing, their arrangement fails to meet the requirements of Rule 200, and their fee-splitting agreement is unenforceable.

Conclusion

Greene does not have a cause of action against our client, Rose Kingsley, to enforce the fee-splitting agreement because the agreement does not meet the requirements of Rule 200 of the Franklin Rules of Professional Conduct.

Greene cannot recover for breach of contract from Kingsley because she will be unable to prove that their relationship was that of partner and associate. Therefore, Kingsley does not need to comply with the demand letter.

02-05 MPT Example 2

Burke & Clements, LLP
Attorneys At Law
4333 Skillman Avenue
Dixon, Franklin 33133

MEMORANDUM February 22, 2005

TO: Thomas Burke
FROM: Applicant
RE: In re Rose Kingsley, Fee Dispute

Pursuant to your memorandum of February 22, 2005, I have researched the issues that you presented. The issues:

1) Whether Greene was a partner or an associate of Kingsley for purposes of Rule 200 of the Franklin Rules of Professional Conduct; and

2) Whether the requirements of Rule 200 have been met by the fee-splitting agreement between Kingsley and Greene and the communication with Moreno.

have been analyzed according the laws of the state of Franklin are listed here.

1) Greene was not a partner or associate of Kingsley for purposes of Rule 200 of the Franklin Rules of Professional Conduct.

Rule 200 - Financial Arrangements Among Lawyers states a lawyer shall not divide a fee for legal services with a lawyer who is temporarily engaged and who is not a partner or associate of the lawyer unless . . . [Requirements Must Be Met]

According to Chambers v. Kay, the Franklin Court of Appeals examined relationships between attorneys to determine whether a lawyer was a partner or associate. The court established, in Footnote 1 of the opinion, that a partnership is, "An association of two or more persons to carry on, as co-owners, a business for profit, connoting co-ownership in partnership property, with a sharing in the profits and losses of a continuing business."

An associate, according to Chambers, is a lawyer who works for another lawyer. A lawyer who works with another lawyer is not an associate. The test is one of the totality of the circumstances.

Here, Greene did not share in the ownership or profits of Kingsley's practice. There was no agreement for them to form a business. Greene had no control over any of Kingsley's profits or losses. Therefore Greene was not a partner.

Accordingly, Chambers provides where the presence of loose supervision and contingent compensation combined together indicates that the engaged lawyer works with and not for the other lawyer.

In this case, Green's agreement was for a contingency fee of 30% of whatever fee Kingsley receives. In addition the agreement states that Kingsley engages Greene to perform tasks listed. Greene may argue that she was paid a salary of $50 per hour, however, the agreement clearly states that this is deemed an advance on the 30%

contingency fee.

Greene maintained her own office, she was free to come and go as she pleased, was not listed on any pleadings as an associate and was retained solely for her expertise with her engineering background. Her access to the client was limited and did not seek compensation after she left other than to enforce the contingency agreement.

Therefore, according to Rule 200, Greene is not a partner or associate of Kingsley and is only entitled to compensation according to the fee splitting agreement if it is permitted by Rule 200.

2) The fee splitting agreement between Kingsley and Greene does not comply with the requirements of Rule 200 as shown by the communication with Moreno.

The Franklin Court of Appeals, in Margolin, established that Rule 200 is a Bright Line Rule. Its purpose is client protection to the maximum extent possible. That purpose is satisfied only by full disclosure and written consent requirements.

The Rule requires: 1) the client has consented in writing thereto after a full disclosure has been made in writing that a division of fees will be made and the terms of such division; and 2) the total fee charged by all lawyers is not increased solely by reason of the provision for division of fees and is not unconscionable.

It appears in this case, requirement two has been met by Kingsley's correspondence to Janice Moreno on 10/23/02. However, the requirement listed in number one does not appear to be satisfied because the terms of the division were not listed.

Greene may contend that she fully informed Ms. Moreno via telephone on 10/30/02 as to the fee arrangement. However, this is very similar to Margolin and although oral disclosure is made, the terms must be in writing.

Greene, as a lawyer, is presumed to have known that the rule requires actual written disclosure to and actual written consent by, the client. Although Moreno consented to the fee split in writing, the terms of the split were not listed, thus violated Rule 200. Since Rule 200 is a Bright Line Rule, any violation of its requirements make any fee splitting agreement unenforceable for non-compliance. As this is to protect clients to the maximum extent possible and not protect lawyers, it would appear that Greene would lose any litigation brought on her behalf.

Therefore, Greene is not entitled to the $300,000 as listed in the agreement and cannot enforce it. I am enclosing copies of the cases listed and Rule 200 for your review. If you have any questions or concerns, please feel free to contact me.

cc: File

Enc: Rule 200
Chambers v. Kay, Franklin Ct. of App, (2002)
Margolin v. Shemaria, Franklin Ct. of App, (2000)

02-05 MPT Example 3

To: Thomas Burke
From: Applicant
Date: 2/22/05
Re: In Re Rose Kingsley

In response to your memorandum dated February 22, 2005, I have reviewed the above-referenced file materials & researched the relevant issues. My findings are as follows:

1) Partner or Associate Status of Greene

The primary case on point in analyzing whether an attorney is a partner or associate of another atty for the purposes of Rule 200 is Chambers v. Kay, (Frank. App. Ct., 2002).

In Chambers v. Kay, Chambers shared office space w/Kay. Kay requested Chambers' assistance as co-counsel on a sexual harassment case. Chambers was responsible for: 1) file maintenance; 2) conducting assigned discovery; 3) conferring w/cl; and 4) appearing as co-counsel @ pre-trial hearings. Both attys were listed on pleadings.

The Chambers Ct defined a partnership as:

> an association of two or more persons to carry on as co-owners a business for profit, connoting co-ownership, with a sharing in the profits and losses of a continuing business.

(emphasis added). Under this definition, Greene could not be considered Kingsley's partner. No facts have been presented that Kingsley or Greene considered Greene a co-owner of Kingsley's sole practice. In fact, Greene's behavior in attempting to start her own firm clearly refutes this assertion.

Additionally, no evidence is present to show that Greene was responsible for sharing any losses of Kingsley's firm. Finally, the terms of the fee agrmt make it clear that Greene was retained only to assist in the Moreno case & not for any long-term, continuing basis. In applying the Chambers definition, Greene does not qualify as a partner under Rule 200.

In defining an associate for the purposes of Rule 200, the Chambers Ct stated "an associate is a lawyer who works for, rather than with, another lawyer." (emphasis in the original.)

In determining if an atty works for another atty as an associate, the Ct considers the overall circumstances including the amt of supervision & compensation. The closer the supervision with non-contingent pmt, the more likely the Ct is to find that the temporarily engaged atty is an associate. Looser supervision w/contingent compensation is more directly co-counsel.

In determining where a given case falls in the spectrum, the Ct considers the following factors in defining how close is the supervision:

a) direct/indirect control of representation
b) oversight of temp atty in legal/factual asp.
c) control over working environment
d) relationship w/client

Although Kingsley maintained control of the relationship w/the client by restricting Greene's access &

maintained control over the work environment by allowing Greene access to her facilities & staff, Kingsley did not oversee all of the factual aspects of the case. In fact, although Kingsley directed the representation & legal aspects as the supervising attorney, she relied on Greene's engineering knowledge & expertise in determining the factual contours of the case.

The Chambers Ct went on to state that "the more indicative evidence of the parties' relationship is the compensation agrmt . . . ." In the Chambers case, the Ct held that the fee-splitting agreement was indicative that Chambers was not Kay's associate under Rule 200. In the instant case, the same conclusion can be supported. Even though Kingsley provided hourly comp. to Greene, the fee agreement clearly states that such comp. is only an advancement against the contingency fee; therefore, the fee agrmt's contingency provisions point away from Greene being Kingsley's associate under Rule 200. Therefore, Rule 200 does not mandate fee splitting w/Greene if she was a temporarily engaged atty who was neither a partner nor associate unless the sub-requirements are also met.

If we argue that the close supervision of Greene indicated an associate relationship, we can remove the agmt from the ambit of Rule 200. Factors in favor of this include that Kingsley controlled the # of hours worked by Greene; Greene was not co-counsel on any pleadings; Greene had no control over litigation strategy; all work was performed at Kingsley's office & not Greene's home or office; Greene was allowed no face-to-face contact w/the client other than through Kingsley and Greene made no appearances on Kingsley's behalf.

2) Have the requirements of Rule 200 been met by agrmt & communication w/client?

The primary case on point in defining Rule 200's first requirement of client consent is Margolin v. Shemaria (Frank. App. Ct., 2000).

In this case, the Ct held that Rule 200 is a bright-line rule & is "satisfied only by full compliance with. . . written-disclosure & written consent requirements" (emphasis in the original. In determining whether these requirements have been met, the Ct stated that a client "has a right to know the extent of, and basis for, the splitting of such fees by two or more lawyers" and that disclosure "must be in writing."

The Ct demanded written disclosure to serve Rule 200's purpose of client protection to the maximum extent possible.

In the present case, although Kingsley disclosed the presence of an agreement in writing to Moreno in the Oct. 23, 2002 letter, the terms and extent of the agreement were disclosed to her orally by Greene in a telephone conversation on October 30, 2002. Therefore, even though Moreno consented to the agreement in writing, Kingsley & Greene were not in compliance w/Rule 200 as interpreted by the Margolin Ct because they did not define the extent & basis of the agreement in writing to Moreno in order to obtain her consent.

Because this agreement & communication did not conform to the requirements of Rule 200, the fee splitting agreement is unenforceable for noncompliance. Therefore, Kingsley would not be required to pay Greene the $300,000. Furthermore, under the Margolin Ct's interpretation of Rule 200, the temporary atty is presumed to have known of Rule 200's requirements of written disclosure & written consent. Therefore, Greene's failure to communicate the terms of the fee-splitting agreement to Moreno & rather confirming them orally is chargeable against Greene in finding that Rule 200's strictures have not been met.

Furthermore, it is debatable whether Moreno's consent to the terms was oral or written. Although Moreno signed the letter on Oct. 30, 2002, the contents of the telephonic memorandum appear as if the letter was signed prior to a clear understanding of the terms of the fee splitting agreement & that her consent after her telephone call to Greene was oral. If Ms. Moreno's signature was affixed to the letter prior to clarification of

the fee-splitting terms, Moreno's consent can only be that given to Greene orally. Oral consent is ineffective to meet the requirements set forth in Rule 200.

Given the policy of maximum client protection as the basis of Rule 200, this consent is likely to be strictly construed by a Ct & unless Moreno testifies otherwise, it is likely that the Ct will determine the letter was signed w/o a full understanding of the fee-splitting provisions & therefore, her consent to the terms was oral only. Given this, the fee agreement would be unenforceable due to non-compliance w/the requirements of Rule 200. Therefore, Kingsley would not be required to pay Greene the contingency fee.

Once you have had a chance to review these matters, please let me know when you are available to conference on additional matters which may be helpful to Ms. Kingsley's cause.